

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2011 FEB -8 P 3: 01

IN THE MATTER OF THE § 2703(d) ORDER)
RELATING TO TWITTER ACCOUNTS:)
WIKILEAKS; ROP_G; IOERROR; AND)
BIRGITTAJ)

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA
Misc. No. 10GJ5793

FILED UNDER SEAL

ORAL ARGUMENT NOT REQUESTED

TWITTER, INC.'S MOTION FOR CLARIFICATION

Twitter, Inc. ("Twitter") hereby submits this Motion for Clarification with respect to its obligations under this Court's Order of December 14, 2010. *See* Exhibit 1 hereto.

On December 14, 2010, this Court issued a sealed order pursuant to 18 U.S.C. § 2703(d) seeking subscriber information and all records and other non-content information for Twitter accounts Wikileaks, rop_g, ioerror and birgittaj from November 1, 2009 to the present. *Id.* On January 5, 2011, upon motion by the government made at the behest of Twitter, the Court issued an Order that unsealed the December 14th Order and authorized Twitter to disclose it to its users. *See* Exhibit 2 hereto.

On or about January 7, 2011, Twitter notified its users of the December 14th Order. The government agreed that those users would have until January 26th to file any motions or pleadings in opposition to the Order. Twitter has been informed by the government that users rop_g, ioerror and birgittaj have filed motions under seal with this Court regarding the December 14th Order, while the Wikileaks user has not. Accordingly, the government has requested that Twitter produce records for the Wikileaks Twitter account. Twitter, however, is concerned that the motions filed by the other three users may address issues related to their association or involvement with the user of the Wikileaks Twitter account, or may otherwise seek to vacate the

December 14th Order in its entirety. If that is the case, producing records for the Wikileaks Twitter account before the pending motions are resolved would prejudice users rop_g, ioerror and birgittaj. Unfortunately, because the pending motions are sealed, Twitter has no way to determine if or to what extent users rop_g, ioerror and birgittaj may actually be prejudiced by production of the Wikileaks records. Twitter proposed to the government that the parties agree to delay production of the Wikileaks records until after the pending motions are resolved, but the government declined. As an alternative, Twitter requested that the government certify that production of the Wikileaks records would not affect the issues raised by the pending motions, but the government declined to reveal the nature of those motions because they are under seal. Accordingly, Twitter is compelled to seek guidance from the Court.

For these reasons, Twitter requests clarification from the Court as to whether it would best serve the interests of justice for Twitter to withhold production of records for the Wikileaks Twitter account until the pending motions are resolved, or to produce the Wikileaks records forthwith. Twitter has advised the government of its intent to seek this clarification from the Court, and both parties agree there is no need for oral argument at this time.

DATED this 8th day of February, 2011.

Respectfully submitted

By 

John K. Roche (VSB# 68594)

Perkins Coie, LLP

700 13th St., N.W., Suite 600

Washington, D.C. 20005-3960

Phone: 202-434-1627

Fax: 202-654-9106

JRoche@perkinscoie.com


Attorneys for Twitter, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2011, the foregoing document was sent via overnight mail and email to the following persons:

John S. Davis
Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
600 East Main Street, Suite 1800
Richmond, VA 23219-2447
[REDACTED]

Attorneys for the United States

By 
John K. Roche (VSB# 68594)
Perkins Coie, LLP
700 13th St., N.W., Suite 600
Washington, D.C. 20005-3960
Phone: 202-434-1627
Fax: 202-654-9106
JRoche@perkinscoie.com

Attorneys for Twitter, Inc.